

May 21, 2014

**VIA ELECTRONIC FILING**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Re: WC Docket No. 11-42 – Lifeline and Link Up Reform and Modernization  
**NOTICE OF EX PARTE PRESENTATION**

Dear Ms. Dortch:

On May 20, F.J. Pollak, President and Chief Executive Officer, TracFone Wireless, Inc. (“TracFone”), Javier Rosado – Senior Officer – Alternative Businesses, TracFone, Mark Rubin, Senior Executive – Government Relations, TracFone, and undersigned counsel for TracFone met with Commissioner Mignon Clyburn and with Rebekah Goodheart, Legal Advisor to Commissioner Clyburn. During the meeting, we discussed TracFone’s provision of Lifeline service as an Eligible Telecommunications Carrier, and briefed Commissioner Clyburn and Ms. Goodheart on several pending TracFone Lifeline reform proposals to further efforts to detect and prevent waste, fraud, and abuse of Universal Service Fund (“USF”) resources. We also discussed the notice of apparent liability for alleged violations of certain Lifeline rules which was issued to TracFone the evening of September 30, 2013.

We described TracFone’s procedures for limiting enrollment in its Lifeline program to one qualified person per household and the fact that the alleged violations noted in the notice of apparent liability were *de minimis*, comprising about three one-hundredths of one percent of the customers subject to the In-Depth Validation (“IDV”) process noted in the notice of apparent liability. We also discussed TracFone’s proposal for addressing alleged violations of the Lifeline rules – a proposal first made by TracFone in response to the notice of apparent liability at Commissioner Ajit Pai’s suggestion that TracFone present an alternative approach. That proposal contains the following elements:

- If duplicates identified through the IDV process are less than one-half of 1 percent (*i.e.*, 99.5% or better compliance), such duplicates should be considered to be *de minimis* and there should be no forfeitures, provided that all USF amounts paid to the provider resulting from those duplicates are returned to the USF.
- Where a provider’s duplicates exceed one-half of 1 percent (*i.e.*, less than 99.5% compliance), there should be forfeitures in amounts based on multiples of USF support received by the providers for such duplicates. That rate should be codified in the Commission’s rules.

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- The rate should be determined in a rulemaking proceeding based upon public comment.
- Any household determined to have received multiple Lifeline-supported services should be prohibited from receiving Lifeline service for one year.

During the meeting, we provided Commissioner Clyburn and Ms. Goodheart with a written presentation document. A copy of that document is enclosed herewith. We also provided Commissioner Clyburn and Ms. Goodheart with a table containing data for each carrier which has received a notice of apparent liability for alleged violation of the Lifeline rules. Included in that data are the error rates (number of intra-company duplicates alleged in the notice of apparent liability as a percentage of total enrolled subscribers subject to the IDV processes upon which the notices of apparent liability was based). A copy of that table also is attached. As noted in that table, TracFone's error rate of 0.038% is far below any other ETC recipient. That error rate includes all 842 duplicates alleged in the NAL. As TracFone explained in its response to the NAL, 181 of those alleged duplicates were errors made by the Universal Service Administrative Company. Exclusion of those 181 errors reduces TracFone's error rate to 0.0297%.

In addition, we discussed recent data compiled by the National Center for Disease Control which indicates that disturbingly large numbers of Americans remain without voice telephone service of any kind and what steps can be undertaken to alleviate that situation. We also discussed TracFone's provision of mobile health care service through its Lifeline program and the status of the Commission's consideration of rural broadband experiments, particularly mobile health care-focused experiments.

Pursuant to Section 1.1206 of the Commission's rules, this letter is being filed electronically. If there are questions, please contact undersigned counsel for TracFone.

Sincerely,



Mitchell F. Brecher

cc: Hon. Mignon Clyburn  
Ms. Rebekah Goodheart

Enclosures

# Enclosures

# TracFone Wireless, Inc.

## FCC Presentation

May 2014



# TracFone Wireless, Inc.

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## Who We Are

- Handset Based technology – you actually “track” your minutes
- 5<sup>th</sup> Largest Wireless provider in the US
- Based in Miami. 800+ full time employees

## We've Grown to over 25 million customers in 18 years

- TracFone Wireless Inc. is the largest no-contract cell phone provider in the US, and has been since its inception 18 years ago.

## What We Stand For

- TracFone believes cell phone ownership is a need, not a privilege, and is committed to making mobile telecommunications service available to everyone
- Our six brands deliver unparalleled access for the underserved
- Consumer Reports recently rated wireless phone service. The 3 highest rated brands were:
  1. TracFone<sup>®</sup>
  2. Straight Talk<sup>®</sup>
  3. NET10<sup>®</sup>

All are TracFone brands.

- J.D. Power recognizes TracFone<sup>®</sup> and Straight Talk<sup>®</sup> as 2014 Customer Champions.

# **SafeLink Wireless®**

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## **SafeLink Wireless®**

- Requested ETC approval upon invitation by the FCC
- Granted forbearance from the Section 214(e)(1) facilities requirement in 2005
- Approved as an ETC in 2008
- Pioneered no charge Lifeline service
- Stand alone Lifeline brand — Safelink Wireless®
- Customers get the best TracFone rates on any card - \$0.10 per minute or less
- Operates in 39 states
- Currently has 4.2 million active customers
- SafeLink Wireless® has serviced 11 million accounts since inception

## Our systems minimize waste, fraud and abuse

- Have always requested last 4 digits of SS and Date of Birth.
- Pioneered and voluntarily have always had 60 days non usage de-enrollment.
- Have always had yearly verification of the entire base, not just a random sample.
- Have never handed out phones in person.

## PQA Results

- Of the 1.3 million customers audited by USAC since 2009, which represent \$13.5 million on FCC Form 497, USAC identified 303 errors for a recovery of \$3,013.

## Audit Results

- After 48 PQAs and 7.5 million customers audited which represent \$72.8 million on FCC Form 497, USAC identified 238 errors for a recovery of \$2,342.

## Lifeline Reform Proposals (to further Prevent Fraud and Abuse)

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- **Document retention** — When the FCC required “full certification” (production by applicants of documentation of program-based Lifeline eligibility), the FCC created an enormous loophole by requiring only that ETCS “review” documentation with no requirement that they retain documentation to prove that the applicants have produced it. Without document retention, there is no way to enforce the Rule or to audit compliance. In May 2012, TracFone filed a petition to close this loophole. That petition received wide industry support and no opposition. Still, the proposal has been pending for 2 years.
- **Real time in-person handset distribution** — Stories of persons handing out phones on street corners, from tents, from car trunks, etc. have created an negative perception of the program. That practice should be stopped. We are not saying that every company that distributes handsets in person cheats; we are saying that the practice creates an opportunity to cheat, is difficult to police, and has been a source of much program criticism. In May 2013, TracFone petitioned the Commission to prohibit in-person handset distribution. That petition remains pending.

## Notice of Apparent Liability

On Sept. 30, the Enforcement Bureau issued a notice of apparent liability for forfeiture of \$4,573,356 for alleged violation of Lifeline rules.

TracFone's response was filed Dec. 4. Important points in that response include:

- No rules were violated and the proposed forfeiture amount, even if there were inadvertent intra-company duplicates, is grossly excessive and unprecedented.
- NAL alleged 842 intra-company duplicates (discovered by USAC, not by the Commission); that number is incorrect – 181 were not duplicates at all, but were separate and unrelated Lifeline subscribers – a USAC/FCC error rate of 21.6%. Excluding those USAC errors, there were 661 intra-company duplicates, out of 2,228,508 accounts subject to DVs.
- NAL alleges that TracFone received \$7,992 in overpayments. This is incorrect as all overpayments discovered through the USAC In-Depth Validation process are recaptured so that TracFone derives no gain and the USF is made whole.
- The total number of duplicates is minuscule – 0.03% (3/100ths of 1 percent). (Far below the 1.5% improper payment standard which is imposed on federal disbursement programs under the Improper Payments Elimination and Recovery Act, 31 U.S.C. § 3321)

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- Remarkably, there was no FCC Enforcement Bureau investigation, or even inquiry. The NAL was based solely on USAC In-Depth Validation results.
- The IDV process was developed by the FCC, USAC and ETCs, including TracFone, as a way to identify and eliminate duplicates. It was not created to be an enforcement tool.
- The IDV process affords carriers a year to amend their Form 497 Lifeline reimbursement claim reports. The NAL was issued months before the end of that one-year amendment period, denying TracFone that opportunity to correct--an opportunity provided for in the FCC's Rules.
- The NAL accuses TracFone of "ignor[ing]" rules and "exploit[ing]" the Lifeline program. This is untrue. TracFone has gone to considerable expense to invest in personnel and systems which detect and prevent duplicate enrollment, including state-of-the-art LexisNexis™ products.
- NAL portrays TracFone as a bad actor and rule violator despite the fact that every fraud prevention reform adopted either was proposed by TracFone or supported by TracFone. Those proposals included:
  - Elimination of Link Up
  - Mandatory de-enrollment for 60 days non-usage
  - Annual re-certification of all customers (rather than just a "random sample");
  - Mandatory collection of date of birth and Social Security No. (last 4 digits)

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- When the Commission imposes large forfeitures (e.g., \$1 million or more), at least one of the following factors are always present:
  - Unjust enrichment by the wrongdoer
  - Loss or damage to consumers
  - Deprivation of funding to the USF
  - Harm to public safety
- None of those factors exist in the TracFone NAL situation.
- The Commission should respond to public and congressional critics of Lifeline by adopting rules to tighten the program and prevent fraud, not by imposing multimillion dollar penalties for minor enrollment problems which were identified and corrected, and which neither benefitted the ETCs nor harmed the USF.
- Rather than deterring bad conduct, these penalties will drive Lifeline providers out of the program by making the costs and risks far beyond any benefit.
- NALs are having an unanticipated adverse consequence in many states where state regulators are concluding that NAL recipients are “guilty as charged” and withholding ETC designations.

## TracFone Proposal

A Commissioner suggested that we propose guidelines for forfeitures for Lifeline rule violations. TracFone has proposed the following:

- If duplicates identified through the IDV process are less than one-half of 1 percent (i.e., 99.5% or better compliance), such duplicates should be considered to be de minimis and there should be no forfeitures, provided that all USF funds paid to the provider resulting from those duplicates are returned to the USF.
- Where a provider's duplicates exceed one-half of 1 percent (i.e., less than 99.5% compliance), there should be forfeitures in amounts based on multiples of USF support received by the providers for such duplicates. That rate should be codified in the Commission's rules.
- The rate should be determined in a rulemaking proceeding based upon public comment.
- Any household determined to have received multiple Lifeline-supported services should be prohibited from receiving Lifeline service for one year.

## Conclusion

Based on the proposal above, the NAL issued to TracFone should be cancelled.

- Intra-company duplicates (.03%) well below the .5% threshold.
- All disbursements for those duplicates are recovered by USAC .
- Commission violated its own Rules by issuing NAL prior to expiration of the one year Form 497 revision period.

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## Comparison of FCC Notices of Apparent Liability

ETC	# Duplicates <sup>1</sup>	Lifeline Funding	Estimated Subscribers <sup>2</sup>	Error Rate	Proposed Fine
TracFone	842	\$3,995,279	2,200,000	0.038%	\$4,573,376
Budget Prepay	691	\$3,941,867	431,922	0.160%	\$3,719,900
Assist	428	\$5,000,000	115,091	0.372%	\$2,203,977
True Wireless	955	\$1,629,341	210,000	0.455%	\$5,501,285
Easy Wireless	307	\$47,572	0.645%	\$1,586,545	
i-wireless	1684	\$2,400,000	259,459	0.649%	\$8,753,074
UTPhone	238	\$953,622	27,843	0.855%	\$1,234,456
Telrite	4,387	\$4,154,410	449,125	0.977%	\$22,399,761
ICON	938	\$2,965,015	86,570	1.084%	\$4,806,381
Global Connections	2,231	\$1,126,859	121,823	1.831%	\$11,702,695
Connexion	3,489	\$368,000	39,784	8.770%	\$18,397,814
Cintex	1,842	\$175,593	18,983	9.703%	\$9,461,978

<sup>1</sup> Alleged duplicate enrollments cited in the Notice of Apparent Liability for each ETC.

<sup>2</sup> The estimated subscribers are based on USAC reimbursement data for each ETC.